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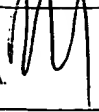
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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/650,335	08/28/2000	Jeffrey A. Giacomel	12643/210	8334
24349	7590	09/17/2004	EXAMINER	
WILLIAM R. GUSTAVSON SUITE 1185 9330 LBJ FRWY. DALLAS, TX 75243			FLANIGAN, ALLEN J	
			ART UNIT	PAPER NUMBER
			3753	

DATE MAILED: 09/17/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. 09/650,335	Applicant(s) GIACOMEL, JEFFREY A. 	
	Examiner Allen J. Flanigan	Art Unit 3753	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
  - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
  - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
  - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 21 June 2004.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1, 2, 4, 6, 7, 9, 11, 20 and 24-35 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 2, 4, 6, 7, 9, 11, 20, 24-29, 31-33, and 35 is/are rejected.
- 7) ☒ Claim(s) 30 and 34 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

Claim 9 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

The recitation in claim 9 ("the temperature being an accurate measure of the temperature of the mass of product") is confusingly worded (should probably read "the *indicated* temperature") and is not supported by the disclosure. Given a mass of product into which the device may be inserted, the temperature of different regions within the mass will most definitely vary. Near the inserted cooling or heating members, or near the surface, or near the thermally conductive container holding the mass, the temperature will differ from the temperature of other regions. Thus it makes no sense to speak of accurately measuring the mass of product, because that mass will typically have a mean temperature, a bulk property which will vary constantly, and would be difficult to accurately measure except under controlled circumstances with sophisticated equipment. Even if the claim referred clearly to mean temperature of the mass, a single, simple temperature indicator using a bimetallic or shape memory alloy such as that disclosed clearly would be unable to accurately (in an error-free way) indicate such a measure.

Claims 1, 4, 6, 7, 24, 31, 33, and 35 are rejected under 35 U.S.C. 102(b) as being anticipated by Snyder et al.

Please see the comments made in regard to the above rejection in the previous Office action. Regarding newly added claims 24, as in claim 4, the recitations of this claim add nothing to the claimed structure, since they concern the intended use of the device. Regarding claims 31 and 35, the claimed "length" is readable on the long dimension of ribs 10R shown, for example, in Figs. 3 and 5 of Snyder et al. Regarding claim 33, note chamber 22 of Snyder et al., which reads on the claimed "pan".

Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Snyder et al. in view of Linger.

Please see the comments made in regard to the above rejection in the previous Office action.

Claim 11 is rejected under 35 U.S.C. 102(b) as being anticipated by Reed.

Please see the comments made in regard to the above rejection in the previous Office action.

Claims 25-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Snyder et al.

The disclosure of Snyder et al. (Figs. 3 and 5, for example) makes clear that the "length" of the ribs 10R of the grid (the long direction as seen in the above figures) is within the claimed range. The examiner reads "length" as the

longest dimension, not as the protrusion from the base of the grid, since the claims do not specify which dimension the "length" is. Although no specific discussion of the dimensions of the cooking grid are given, conventional cooking apparatus using rectangular grids like those shown in Snyder et al. for grilling clearly would have a length within the claimed range.

Claims 28 and 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Reed.

As with Snyder et al., even though there is no explicit disclosure of the diameter of the cylindrical housing 28 of Reed (and thus the length of the longest elements 21 fitting within it), it is well known that standard foodservice burgers would have a diameter of at least four inches.

Claims 2, 20, and 32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Reed in view of Snyder et al.

Please see the comments made in regard to the above rejection in the previous Office action.

Applicant's arguments filed 6/21/04 have been fully considered but they are not persuasive.

The applicant's arguments regarding claims 1, 4, and 11 are consonant with those offered during prosecution prior to the appeal in this application, and the Examiner's position regarding the relative weight to which intended use recitations are entitled in weighing the patentability of structural claims were affirmed by the recent BPAI decision. It is immaterial whether Snyder et

al. intended their ribs to lay on, or extend into, food while in use. The claimed “length” dimension has been addressed in the Examiner’s comments above in the rejections.

Applicant’s arguments regarding claims 2 and 20 are also not persuasive. Both the patents relied on concern grilling or cooking food, and the motivation provided by Snyder et al. (“ease in the removal of food such as . . . hamburgers”) would clearly be relevant to Reed’s hamburger cooking grills.

Claim 9 has been rejected above based on the added “accurate temperature” language. The presumption that the mass of product will have a uniform temperature is incorrect; only a stirrable mass located within a reasonably insulated container and agitated for mixing would have a uniform temperature. Inserting a heat sink device would invariably produce a temperature gradient of some sort. In practice, using the claimed device in a metal foodservice pan would provide similar gradients of temperature within the mass, even if applicant’s disclosed device was limited very closely spaced food contacting fins.

Applicant’s comments regarding claim 32 ignore the Fig. 10 embodiment of Snyder et al., and also it appears that the upper portion of the side surfaces of ribs 10R are planar and parallel as well (see Fig. 6, for example).

Claims 30 and 34 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

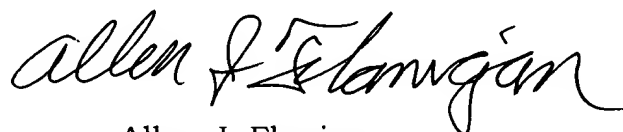
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Allen J. Flanigan whose telephone number is (703) 308-1015. The examiner can normally be reached on M-F 9:00-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Scherbel can be reached on (703) 308-1272. The

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fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, reading "Allen J. Flanigan". The signature is fluid and cursive, with the first name "Allen" and last name "Flanigan" clearly distinguishable.

Allen J. Flanigan  
Primary Examiner  
Art Unit 3753

AJF